IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
JUDGES: MARK J. CAVANAGH,
KAREN FORT HOOD AND RICHARD ALLEN GRIFFIN

FORD MOTOR COMPANY,

Petitioner-Appellant,

-vs

BRUCE TOWNSHIP,

Respondent-Appellee.
_____/

Supreme Court No. 127424

Court of Appeals No. 246579

Michigan Tax Tribunal No. 288822

FORD MOTOR COMPANY,

Petitioner-Appellant,

-vs-

CITY OF WOODHAVEN and
COUNTY OF WAYNE,

Respondents-Appellees.
_____/

Supreme Court No. 127422

Court of Appeals No. 246378

Michigan Tax Tribunal No. 294958

FORD MOTOR COMPANY,

Petitioner-Appellant,

-vs-

CITY OF STERLING HEIGHTS,

Respondent-Appellee.
_____/

Supreme Court No. 127423

Court of Appeals No. 246379

Michigan Tax Tribunal No. 294924

BRIEF ON APPEAL - APPELLEE, BRUCE TOWNSHIP
ORAL ARGUMENT REQUESTED

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STATEMENT OF BASIS OF JURISDICTION

Bruce Township states that Ford Motor Company's jurisdictional summary and standard of review are correct.

COUNTER-STATEMENT OF QUESTIONS INVOLVED

Did the majority opinion of the Court of Appeals and the Michigan Tax Tribunal properly conclude that Ford Motor Company was not entitled to relief under MCL 211.53a because Ford Motor Company was not assessed and did not pay taxes in excess of the correct and lawful amount due to a mutual mistake of fact made by Ford Motor Company and the Bruce Township assessing officer?

Appellant says:	"No"
Court of Appeals says:	"Yes"
Appellee say:	"Yes"
Michigan Tax Tribunal says:	"Yes"

I. INTRODUCTION

This case involves a challenge by Ford Motor Company ("Ford") to the personal property assessment arrived at by the Bruce Township ("Township") assessor and resultant tax paid on the personal property assessment. Ford claims that its personal property statement filed with the Township double-reported certain assets, which assets were assessed and taxed by the assessor. Ford demands a refund of the taxes paid on the personal property allegedly double-reported by Ford on its personal property statement, for the 1998 and 1999 tax years.

MCL 211.30 allows a taxpayer, i.e. Ford, to file a petition before the Township Board of Review in March for the tax year in question. If Ford did not obtain relief from the Board of Review, pursuant to MCL 205.735(2), Ford could petition the Michigan Tax Tribunal ("MTT") for relief. However, the MTT does not have jurisdiction where a taxpayer does not first appear before the local Board of Review. MCL 205.735(1). Ford did not appear before the Township Board of Review for the tax years in question.

Notwithstanding Ford's failure to file with the Township Board of Review, Ford could have filed for relief under MCL 211.154 which provides:

> If the State Tax Commission determines that property liable to taxation. . . . . has been incorrectly reported or omitted for any previous years, but not to exceed the current assessment year and two years immediately preceding the date of discovery and disclosure to the State Tax Commission of the incorrect reporting or omission the State Tax Commission shall place the corrected assessment value for the appropriate years on the appropriate current assessment roll. . . . .

MCL 211.154 also allows not only for a refund of excess taxes paid, if a refund is due,

but also interest on the excess tax payment. Ford did not avail itself of the remedy provided by MCL 211.154.

In 1958, the legislature enacted MCL 211.53a which states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer, may recover the excess so paid, without interest, if suit is commenced within three (3) years from the date of payment notwithstanding that the payment was not made under protest.

Ford advocates a legally incorrect interpretation of the mutual mistake of fact requirement of MCL 211.53a in order to provide Ford relief from the alleged overpayment of personal property taxes; when in reality, Ford's mistake, if any, was unilateral. Even if it is conceded that the Township assessor made a mistake, the mistake of the assessor was not the same mistake made by Ford, and therefore, the mutuality requirement of MCL 211.53a is not satisfied.

II. COUNTER-STATEMENT OF FACTS

A. PERSONAL PROPERTY STATEMENTS

Ford is required to report and file with the Township assessor on a State Tax Commission ("STC") form all personal property in Ford's possession as of December 31 of each year.[1] The Township assessor applies to the personal property costs reported by Ford a depreciation multiplier from the State Tax Commission Assessor's Manual to arrive at the true cash value of the personal property for each tax year. The assessor, then, calculates the tax.

Ford filed with the Township personal property statements for parcel ID #50-043-900-

[1] MCL 211.19, MCL 211.21.

15 and #50-043-900-011 (the property) for the 1998 and 1999 tax years. Township Appendix ("Twp App") at 1b - 41b. The assessor determined the true cash value of Ford's personal property for 1998 and 1999 tax years.

B. MTT DOCKET NO. 288822

On or about February 19, 2002, Ford filed a petition for review with the Michigan Tax Tribunal ("MTT"). Ford App at 17a - 20a. The petition was assigned Docket No. 288822.[2] In its petition, Ford alleges that certain personal property was double reported as a result of Ford's mistake. Ford's petition incorrectly named the City of Romeo as the jurisdiction responsible for the assessing of Ford's property. The Township is the jurisdiction which is responsible for the assessment and calculation of tax.

On March 13, 2002, the MTT issued a sua sponte order dismissing Ford's petition. Ford App at 26a - 27a. Ford appealed to the Court of Appeals. In response, the City of Romeo filed a motion to dismiss Ford's appeal. The City of Romeo's motion was based on the fact that the City was not responsible for, and does not make assessments of real or personal property located in the Village.

On September 13, 2002, the Court of Appeals entered an order denying the City of Romeo's motion to dismiss Ford's appeal. Twp App at 42b. The Court of Appeals reversed the dismissal and remanded the matter to the MTT to allow the parties and Tribunal to address issues regarding joinder and substitution of parties. The Court of Appeals specifically

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[2] Ford appealed the personal property tax assessment for 1998 and 1999 for the following properties: ID #50-001-900-012-00 (personal property at the Ford Proving Ground); ID #50-043-800-900-12 (personal property at the Ford Engine Plant); ID #50-043-900-015-00 (IFT, personal property at Ford Engine Plant); and ID #50-043-800-900-11 (IFT personal property at Ford Engine Plant).

stated its order of reversal was not based on the merits of the appeal.

On December 17, 2002, Ford filed a motion to amend the petition. Ford App at 28a - 29a. Ford attached a proposed amended petition to its motion. Ford App at 30a - 33a. The amended petition included the 1998 and 1999 tax years for the personal property in question.[3] The proposed amended petition alleged that Ford paid personal property taxes for the 1998 and 1999 tax years as a result of Ford's mistake in not removing certain assets from its inventory.

On January 17, 2003, the MTT issued an order granting Ford's motion to substitute the Township for the City of Romeo; denying Ford's motion for leave to file an amended petition; and dismissing the case. Ford App at 34a - 37a.

Ford appealed the MTT dismissal of the petition. On October 5, 2004, in a published decision, the Court of Appeals affirmed the decision of the MTT dismissing the Ford petition. Ford App at 51a - 65a. Ford filed an application for leave to appeal to this court. On October 19, 2005, the court granted Ford's application for leave to appeal.

C. MTT DOCKET 294990

While Ford's appeal of the MTT sua sponte order dismissing Ford's petition in Docket No. 288822 was pending, Ford filed another petition on or about September 6, 2002, with the MTT naming Bruce Township as the respondent. Twp App at 43b - 49b. This petition was assigned Docket No. 294990. The petition alleged Ford's mistake in misreporting its personal property lead to an improper determination of true cash value, state equalized value, and

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[3] The amended petition appealed the assessments for ID #50-043-900-015-00 (IFT personal property at Ford Engine Plant); and ID #50-043-800-900-11 (IFT personal property at Ford Engine Plant).

taxable value for the 1999 tax year. The petition did not include the 1998 tax year.[4]

The MTT, on January 10, 2003, dismissed Ford's appeal for the reason that the MTT considered Ford's appeal to be a duplicate of the appeal filed in Docket No. 288822. Twp App at 50b.

On February 20, 2003, the MTT entered an order denying Ford's motion for reconsideration of the MTT order of January 10, 2003 dismissing the petition. Twp App at 51b.

Ford filed an appeal to the Michigan Court of Appeals regarding the order of dismissal entered by the MTT. On September 14, 2004, the Court of Appeals, in an unpublished opinion, affirmed the decision of the MTT. Twp App at 52b - 53b. Ford sought reconsideration from the Court of Appeals. On November 19, 2004, the Court of Appeals denied Ford's motion for reconsideration. Twp App at 54b.

III. ARGUMENT

A. THE PRESENT CASE DOES NOT INVOLVE A MUTUAL MISTAKE OF FACT UNDER CONSUMERS POWER

Ford's principal argument is that because the court in *Consumers Power Co. v Muskegon Co.*, 346 Mich 245; 78 Nw2d 223 (1956), mentioned the words, "mutual mistake" in reference to the facts of the case, and the legislature enacted MCL 211.53a approximately two (2) years after the *Consumer Power* opinion; the phrase "mutual mistake of fact" must be construed and understood for purposes of MCL 211.53a as in accord with *Consumers Power*.[5]

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[4] Ford appealed the assessment for parcel ID #50-043-900-015-00 (IFT personal property Ford Engine Plant; and ID #50-043-800-900-11 (IFT personal property Ford Engine Plant). Ford did not include the 1998 tax year for the reason that if provided relief under MCL 211.53a, the 1998 assessment and resulting tax was outside of the three (3) provisions of the statute.

[5] Ford brief at 21.

While both the majority and dissenting opinions of the court in *Consumers Power* mention the words "mutual mistake", the decision did not turn on the analysis of whether the assessment and resultant tax was due to a mutual mistake of fact. The court's reference to the term "mutual mistake" in *Consumer Power* is by way of dicta and not decision. The *Consumers Power* court did not engage in defining "mutual mistake of fact" and appeared to use the term in a general sense to apply to a "mistake" as opposed to specifically applying the term to the facts in *Consumers Power*. Justice Smith, at 253 of the dissent, said, "What we have before us is simply an overpayment, to the taxing authority, arising out of a mutual mistake of fact, and arithmetical, clerical error." Justice Smith equated a clerical error with a mutual mistake of fact.

The mistake in *Consumers Power* was a clerical error attributable to the township assessor who misplaced a decimal point resulting in an assessment and tax that was excessive. The court in *Consumers Power* refused to fashion an equitable remedy for the taxpayer to receive a refund of the excess tax. The majority opinion in *Consumers Power* at 249 referenced the plaintiff's reliance on *Pabst Brewing Company v Kotecki*, 163 Wis 101; 157 NW 559. In *Pabst,* the assessor entered an erroneous item of plaintiffs' personal property on the assessment roll which resulted in an overpayment of taxes in excess of $8,000.00. The Wisconsin Court said:

> It is obvious that the excess of tax was the result of a purely clerical error of the assessor, who had no intention to insert these two items twice each on the assessment roll. . . The facts alleged show clearly that the payment of this amount was the result of a mistake of fact due to an error committed by the city officers. . .

The majority in *Consumers Power* noted that the Wisconsin legislature enacted a statute which provided for the filing of a claim against the city by a taxpayer who was

aggrieved by the levying and collection of an unlawful tax. The Wisconsin statute did not define what constituted an unlawful tax, but gave the city the right to refund the tax if the court found the same to be unlawful. The majority opinion then went on to note that there was no such provision in Michigan.

The clerical error by the assessor in *Pabst* was essentially the exact same clerical error which was committed by the assessor in *Consumers Power*. In denying relief, the majority opinion in *Consumers Power* held at 251 "To grant the relief requested by Plaintiff would require this court to exercise legislative prerogatives, namely, to write into the statute the right to recover taxes paid under mutual mistake. This cannot be done." That is the only reference to the term "mutual mistake" which appears in the majority opinion. Referring to the clerical error which occurred in *Consumers Power* as a mutual mistake is inconsistent with the facts of *Consumers Power*. The Wisconsin court in *Pabst* correctly identified the same type of error which occurred in *Consumers Power* as a "purely clerical error of the assessor." The majority opinion in *Consumers Power* referring to the clerical error as a mutual mistake (assuming that was the intent of the majority) demonstrates that the court used the term in a general sense. A more plausible explanation for the majority's use of the term "mutual mistake" was that both the city assessor and taxpayer conceded that a mistake had been made in the assessment and resultant payment of the tax based on the assessment. The majority opinion at 246 observed as follows:

> Plaintiff claims that its payment of excess taxes was due to a mistake of fact, both on the part of the assessor who figured the tax and made the levy and on the part of the plaintiff who failed to discover the error until after the taxes had been paid.

The plaintiff in *Consumers Power* postured the case not one of mutual mistake of fact,

but a mistake of fact. This is the exact set of circumstances which was referenced by the majority opinion in the Court of Appeals:

> When an assessor assesses a tax in excess of the correct and lawful amount, and the taxpayer pays it, there is always a mistake that is mutual in the sense that both parties made a mistake; but, there is not always a "mutual mistake of fact." If the assessor's over-assessment resulted from an error in professional judgment, with regard to the subject property, and the taxpayer's over-payment was a consequence of oversight, there would be no "mutual mistake of fact" giving rise to a remedy under MCL 211.53a, albeit, there might be a remedy available under MCL 211.154.

The dissent in *Consumers Power* referred to the clerical error and over-payment of tax as arising out of a mutual mistake of fact. However, Justice Smith did not engage in an analysis of what constitutes a mutual mistake of fact. It was assumed by the dissent that the facts of *Consumers Power* gave rise to a mutual mistake of fact. In reality, the mistake in *Consumers Power* was, clearly, a clerical error made by the assessor in the placement of a decimal point, at 252 of the dissent. The dissent in *Consumers Power* equated a clerical error as being synonymous with a mutual mistake of fact. Ford takes the same position that "Section 53a was enacted in response to the *Consumers Power* decision. It specifically provides the statutory authorization the majority opinion in *Consumers Power* held was necessary to permit refund of excessive taxes arising from a mutual mistake of fact."[6] This statement is inconsistent with MCL 211.53a. The legislature, in adopting MCL 211.53a, differentiated between a clerical error and a mutual mistake of fact. If the legislature intended that a clerical error would be synonymous with a mutual mistake of fact, the legislature was not required to provide for both a clerical error and mutual mistake of fact. The conclusion is

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[6] Ford brief at 19.

obvious. The legislature intended MCL 211.53a to address a remedy for two (2) separate scenarios, i.e., a purely clerical error made by the assessor, and a mutual mistake of fact made by the assessing officer and the taxpayer. A clerical error is not made by the taxpayer and the assessor. A clerical error is only made by the assessor. The second form of relief provided for by MCL 211.53a is where a mutual mistake of fact is made by both the assessing officer and taxpayer.

While the legislature may have adopted MCL 211.53a as a result of the decision in *Consumers Power*, the statute does not equate a clerical error with a mutual mistake of fact as did the court in *Consumers Power.* It is also cogent to note that the legislature, in adopting MCL 211.53a, could have provided relief for a mistake of fact. However, MCL 211.53a was written much more narrowly so as to preclude relief for a mistake of fact. The triggering mechanism in MCL 211.53a is the mutuality of the mistake which must be relied upon by both the assessing officer and taxpayer.

The enactment of MCL 211.53b is further proof that the term "mutual mistake of fact" is not synonymous with the way the term was used in *Consumers Power.* MCL 211.53b(1) allows for the correction of a clerical error or mutual mistake of fact relating to a correct assessment figure, rate of taxation, or mathematical computation. Section (1) requires the mutual mistake of fact must be verified by the local assessing officer and approved by the Board of Review at the Board's December or July meetings, conducted specifically for the purposes set forth in MCL 211.53b. In other words, for a mutual mistake of fact to exist under MCL 211.53b, the assessor must stipulate to the mistake. If the Township assessor refuses to acknowledge the mistake, there is no relief provided under MCL 211.53b. The end result with regard to the use of the terminology "mutual mistake of fact" in *Consumers Power*, MCL

211.53a, and MCL 211.53b is that there must be consent, a stipulation between the assessor and the taxpayer that a mistake occurred. The mutuality requirement is satisfied in MCL 211.53b by the consent of the assessor that a mistake occurred.

Based on MCL 211.53a, the taxpayer in *Consumers Power* would have been afforded relief for a clerical error but not an error based on a mutual mistake of fact. In *Consumers Power*, both the assessor and taxpayer made a mistake. The assessor's mistake was misplacement of a decimal point. The taxpayer's mistake was an oversight in not noticing the assessing mistake. There was no mutual mistake of fact, i.e., one mistake being the placement of a decimal point, and the second mistake paying the taxes without realizing the error.

Ford cites *Atkinson v Detroit*, unpublished opinion per curium of the Court of Appeals, decided June 25, 1999 (Docket Nos. 199537, 199803). In *Atkinson*, the court found a mutual mistake of fact where "all of the parties erroneously believed that petitioner's properties were situated within the boundaries of Detroit, rather than Grosse Pointe Park. The location of the boundary line was a "basic assumption" that "materially affected" the relationship between the parties. Accordingly, we are satisfied that a mutual mistake of fact existed. . ." The mistake in *Atkinson* is the same type of mutual mistake of fact recognized by the majority opinion in the Court of Appeals. The majority of the Court of Appeals said, "However, for example, if the assessor's error was because of his reliance on an incorrect survey representation by a third party of a boundary line, and the taxpayer paid the taxes relying on that same misrepresentation, there would be a mutual mistake of fact for which relief would be available under MCL 211.53a." Here, the Township assessor did not have an erroneous belief regarding the assessment of Ford's personal property. The assessor's assumption was that

Ford's personal property statement was correct. The Township assessor did not have a mistaken belief as to the very existence of Ford's personal property.

While the court in *Atkinson* believed that a mutual mistake of fact existed, the court relied on the contract law definition of mutual mistake which contract analysis has been cautioned against. In *General Products Delaware Corp v Leoni Township*, an unpublished decision of the Court of Appeals decided on May 8, 2003 (Docket No. 233432), the court observed:

> We believe that the Tribunal properly cautioned against the use of contract-based case law in the definition of "mutual mistake" contained within because there is an element of equity in contract law that is not present in property tax law. Our Supreme Court noted in *Spoon-Schacket Co. Inc. v Oakland County*, 356 Mich 151, 171; 97 NW2d 25 (1959), that, "Government powers of taxation are controlled by constitutional and statutory provision. . . It is not possible to adjudicate issues arising under taxation laws by the general application of equity principle."

Ford relies heavily on *Delta Airlines, Inc. v Romulus*, an unpublished per curium opinion of the Court of Appeals decided August 2, 2002 (Docket No. 225881).[7] Ford cites *Delta Airlines* for the proposition that the Court of Appeals, in reversing the MTT, found that there was a mutual mistake of fact which was correctable under MCL 211.53a. However, close reading of *Delta Airlines* must lead one to conclude that the Court of Appeals found a mutual mistake based on the stipulation of the parties that the tax was mistakenly assessed and mistakenly paid. In *Delta Airlines*, the taxpayer and the assessor attempted to enter into a stipulation with the Tax Tribunal to refund property taxes which both parties admit had been mistakenly assessed and paid. The MTT refused to enter the stipulation in part on the basis

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[7] Ford brief at 23, also Exhibit E.

there was no clerical error or mutual mistake of fact and, therefore, the MTT did not have jurisdiction. In reversing the decision of the MTT, the *Delta Airlines* court held, in part, as follows:

> Because the parties agree that the tax was mistakenly assessed and mistakenly paid and because there is no evidence to the contrary, the tribunal's finding that there was no mutual mistake of fact is not supported by competent, material and substantial evidence on the whole record.

The court in *Delta Airlines* found that the mutuality requirement of MCL 211.53a was satisfied when the taxpayer and assessor stipulated to the error. The *Delta Airlines* court did not engage in an analysis of what constitutes a mutual mistake of fact to afford relief under MCL 211.53a. The essence of the court's opinion in *Delta Airlines* is one paragraph which relies on the stipulation of the taxpayer and assessor that a mistake was made. Here, the Township assessor has not stipulated to an error. Ford's assessment was correct based on the information submitted by Ford to the assessor.

B. MCL 211.53a SHOULD NOT BE LIBERALLY AND BROADLY INTERPRETED TO PROVIDE FORD RELIEF.

At the time *Consumers Power* was decided, a taxpayer had a statutory remedy pursuant to MCL 211.53 to recover illegal or excess taxes. MCL 211.53 required that the taxes first be paid under protest and then suit filed within thirty (30) days. The plaintiff in *Consumers Power* did not pay the taxes under protest and did not sue within the requisite thirty (30) day time period. *Consumers Power* at 246.

The legislature, in enacting MCL 211.53, provided a mechanism to recover payment of excess tax, but the remedy is narrow and limited. MCL 211.53a eliminates the necessity to pay taxes under protest; allows suit to be commenced within three (3) years from the date

of payment; does not require the payment of interest on the refund; and sets forth two (2) limited circumstances under which relief may be obtained, a clerical error and a mutual mistake of fact made by the assessing officer and taxpayer. Notwithstanding its remedial nature, the words of MCL 211.53a must itself control. *Associated Builders and Carpenters, Saginaw Area Chapter v Director, Department of Consumer and Industry Services*, 267 Mich App 386; 705 NW2d 509 (2005) citing *Western Michigan Univ. Bd. of Control v Michigan*, 455 Mich 531; 565 NW2d 828 (1997). Courts may not speculate as to the probable intent of the legislature beyond the language expressed in the statute. *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2000). In reviewing the language of MCL 211. 53a, there is no indication the legislature intended a wide-sweeping interpretation of the statute so as to provide Ford relief under the facts of this case. The legislature in enacting MCL 211.53a addressed limitations in MCL 211.53.

The first detailed analysis by the appellate courts of the term "mutual mistake of fact," as used in MCL 211.53a, is contained in *General Products.* [8] In *General Products,* the taxpayer: misidentified various types of personal property as to the year of acquisition; reported assets that had been disposed of as if still owned or possessed by the taxpayer; and reported certain personal property that was exempt from taxation. The taxpayer alleged that the overpayment of taxes resulted from a mutual mistake of fact under MCL 211.53a. The *General Products* court relying on the definition of "mutuality" as contained in Black's Law Dictionary, held:

> Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The

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[8] *General Products* is attached as Exhibit 1.

> assessor's mistake was based on petitioner's representations on a personal property statement. Thus, there was a different basis for each of the two mistakes made. . . Petitioner argues that by accepting this statement, the assessor is adopting as his belief and should be deemed to have made the same mistake as the petitioner. However, this is contrary to the plain meaning of the term, "mutual mistake" of fact. In essence, petitioner is asking that its unilateral mistake be imputed to the assessor and reclassified as a mutual mistake of fact.

In holding that the MTT correctly dismissed the taxpayer's petition in *General Products,* the court said:

> When taken as a whole, the plain meaning of the statute, case law, statutory interpretation and the availability of another remedy, indicate that the Tribunal was correct in its determination that this situation did not present a "mutual mistake of fact" and was not properly brought under MCL 211.53a. There were two separate related events in this case. The first was a unilateral mistake made by petitioner in its preparation of its personal property statement. The second event was respondent's reliance on petitioner's assertion in making its assessment. There was no "mutual mistake" because each party had different information on which to base their ultimate conclusions.

The majority of the Court of Appeals correctly observed that:

> When an assessor assesses a tax in excess of the correct and lawful amount, and the taxpayer pays it, there is always a mistake that is mutual in the sense that both parties made a mistake; but, there is not always a "mutual mistake" of fact. If the assessor's over-assessment resulted in an error in professional judgment with regard to the subject property and the taxpayer's overpayment was a consequence of oversite, there would be no, "mutual mistake" of fact, giving rise to a remedy under MCL 211.53a; albeit, there may be a remedy available under MCL 211.154. . .

Because the legislature used the term "mutual" mistake of fact, as opposed to "mistake" of fact, there must be the element of mutuality (both mistakes based on the same error) present to provide relief under MCL 211.53a. Ford's interpretation would do away with

the mutuality requirement, and re-write MCL 211.53a to provide relief for unilateral mistake.

C. ASSUMING THE ASSESSOR MADE A MISTAKE, THE ASSESSOR'S MISTAKE DID NOT CONTAIN THE MUTUALITY REQUIRED BY SECTION 53a.

Ford contends that the Township assessor made a mistake by issuing assessments and tax bills and accepting payment in an amount greater than the lawful amount.[9] Assuming, for the sake of argument, that the Township assessor made the mistake as described by Ford, the assessor's mistake does not contain the required mutuality to provide Ford the relief under MCL 211.53a based on a mutual mistake of fact.

The majority opinion in the Court of Appeals observed that when an assessor assesses a tax in excess of the correct amount and the taxpayer pays it, there is always a mistake that is mutual in the sense that both parties made a mistake. However, the fact that both the assessor and the taxpayer made a mistake, does not always rise to the level of a mutual mistake of fact. The issue of mutuality with regard to a mistake regarding personal property inventory was addressed in *General Products,* where the court said,

> Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The assessor's mistake was based on petitioner's representations on its personal property statement. Thus, there was a different basis for each of the two mistakes made. . .

The error in *General Products*, misfiling of a personal property inventory, is the same error alleged to have been made by Ford. The majority opinion of the Court of Appeals stated, "Comparing the "mistake of fact" that directly caused the assessor's excess assessment to the taxpayers excess payment would provide the necessary information to

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[9] Ford brief at 30.

determine whether the requisite mutuality for recovery under MCL 211.53a exists." The court in *General Products* provided the analysis to the formula developed by the majority opinion by the Court of Appeals and correctly concluded as did the majority of the Court of Appeals in the instant case that the mutuality requirement to provide Ford relief under MCL 211.53a did not exist.

D. TO THE EXTENT THE MAJORITY OPINION IN THE COURT OF APPEALS RENDERS MCL 211.53a INAPPLICABLE TO PERSONAL PROPERTY, A TAXPAYER HAS SEVERAL REMEDIES FOR INCORRECTLY REPORTED PERSONAL PROPERTY RESULTING IN AN EXCESS TAX.

Ford alleges that the majority opinion of the Court of Appeals, for all intents and purposes, renders MCL 211.53a inapplicable to personal property for the reason that a taxpayer's misreporting of personal property would always be considered a unilateral mistake.[10] A taxpayer has a legal obligation to be diligent in correctly filing personal property statements. Willfully neglecting or refusing to complete and file the personal property statement is a criminal offense.[11] Ford representatives required to sign the personal property statements filed with the Township swore that, "The above was a full and true statement of all tangible personal property owned or held by Ford Motor Company in this assessing district." Twp App at 4b, 13b, 19b, 29b, 39b.

As discussed above, a taxpayer is provided several remedies to correct an improper assessment of personal property and resulting excessive tax. MCL 211.30 allows the taxpayer to file a petition before the Township Board of Review for the tax year in question. If the Board of Review does not provide relief, the taxpayer has a right to file a petition with

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[10] Ford brief at 34.

[11] MCL 211.21

the MTT.

If the assessor and Board of Review consent, a mutual mistake of fact can be corrected pursuant to MCL 211.53b.

MCL 211.154 authorizes the STC to correct personal property statements, including the year under assessment and two (2) years immediately preceding the date of discovery and disclosure to the Tax Commission of the incorrect reporting. The statute also requires payment of interest in the event the correction results in a decreased tax liability.[12]

To the extent the majority opinion in the Court of Appeals renders MCL 211.53a inapplicable to personal property, the taxpayer, as set forth above, is not without a remedy. The legislature has provided three (3) separate remedies for taxpayers paying excessive taxes for misreporting personal property. Ford wants this court to fashion a fourth remedy, by adopting a legally incorrect interpretation of MCL 211.53a. This court should adopt the well reasoned decision of the majority in the Court of Appeals and the reasoning in *General Products* to deny Ford and similarly situated taxpayers a fourth remedy for incorrectly reporting personal property.

IV. CONCLUSION AND RELIEF REQUESTED

Ford made an unilateral mistake in reporting its personal property inventory to the Township assessor. Ford attempts to impute its unilateral mistake to the assessor to create a mutual mistake of fact to provide Ford a remedy pursuant to MCL 211.53a. Ford's attempt

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[12] It would be advantageous to a taxpayer to seek a correction of improperly reported personal property under MCL 211.154 as opposed to MCL 211.53a for the reason that the taxing jurisdiction is not required to pay interest for a refund of taxes made under MCL 211.53a.

to impute its unilateral mistake to the assessor is legally flawed and should be rejected by this court.

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Dated: January 13, 2006

EXHIBIT 1

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

GENERAL PRODUCTS DELAWARE CORPORATION, Petitioner-Appellant, Cross-Appellee,
v.
LEONI TOWNSHIP, Respondent
and
JACKSON COUNTY, Intervening-Respondent-Appellee, Cross-Appellant.

No. 233432.

May 8, 2003.

Before: MURPHY, P.J., and OWENS and SCHUETTE, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** In this Tax Tribunal case, petitioner, General Products, appeals the Tax Tribunal's grant of partial summary disposition based on MCR 2.116(C)(4) and intervening-respondent, appellee Jackson Township appeals the Tax Tribunal's denial of its motion for summary disposition based on MCR 2.116(C)(10). We affirm.

I. FACTS

This case arises from the September 15, 1997 petition filed by petitioner with the Michigan Tax Tribunal regarding the 1994-1997 tax years. Petitioner is a Delaware Corporation that manufactures various automobile parts.

Petitioner filed the petition seeking to recover a portion of the personal property taxes paid to Leoni Township believing that it had made an overpayment. The petition alleged that when petitioner prepared its personal property statements, and then filed them with Leoni Township, it overpaid due to seven "mutual mistakes of fact" involving distinct categories of property. Specifically, petitioner alleged the following were "mutual mistakes of fact:" (1) various types of personal property were misidentified as to their year of acquisition; (2) assets that had been disposed of were reported and taxed as if still owned or possessed by General Products; (3) exempt special tools were taxed; (4) various types of personal property were reported and/or taxed in the wrong property classification; (5) computer software was misclassified as taxable personal property; (6) exempt industrial facilities personal property was misclassified and taxed; and (7) certain real property consisting of raw materials and building improvements were misclassified and taxed as personal property.

Leoni Township utilized the information provided by petitioner on its personal property statements, resulting in the alleged incorrect assessments. After petitioner filed its petition with the Tax Tribunal, intervening-respondent- appellee Jackson County filed a motion to intervene in the proceeding. [FN1] The Tax Tribunal granted the motion to intervene.

> FN1. Intervening respondent Jackson County is the appellee in this matter and will be referred to as either respondent or appellee throughout. Leoni Township is not an appellee and although is the original respondent, will be referred to as Leoni Township throughout.

On September 25, 1998, respondent and Leoni Township filed motions for partial summary disposition for claims involving the special tools exemption (one of the seven categories alleged by petitioner to involve mutual mistakes of fact). On March 8, 2001, the Tax Tribunal issued its orders.

First, the Tax Tribunal denied respondent's motion for summary disposition pursuant to MCR 2.116(C)(4) and (C)(10) based on respondent's allegations that no genuine issue of material fact existed regarding the useful life of special tools. This decision is the basis for respondent's cross appeal.

Second, the Tax Tribunal granted respondent's motion for summary disposition relating to the issue of mutual mistake of fact alleged to have occurred in the special tooling exemption. The Tribunal determined that a taxable status exemption issue under a M.C.L.§ 211.53a claim is an issue of law, and not an issue of fact. As a result, the Tax Tribunal reasoned it lacked jurisdiction in this matter.

***2** Third, the Tribunal determined that petitioner did not satisfy the criteria for mutuality of mistake of fact.

The Tribunal determined that in the present case, the mistake was unilateral because it occurred at a point in time before petitioner filled out its personal property statements and there was never a common mistaken belief. Thus, the Tribunal stated that it lacked jurisdiction pursuant to M.C.L. § 211.53a, which requires a mutual mistake of fact.

Finally, the Tax Tribunal sua sponte dismissed petitioner's remaining six claims regarding the other categories of property that it alleged were subject to mutual mistakes of fact. The Tribunal found that the remainder of the claims possessed identical issues regarding "mutual mistake of fact" and that the Tribunal lacked jurisdiction pursuant to M.C.L. 211.53a.

II. STANDARD OF REVIEW

Although we generally review the grant or denial of summary disposition de novo, *Spiek v. Dep't of Transportation,* 456 Mich. 331, 337; 572 NW2d 201 (1998), "review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v. Dep't of Treasury,* 445 Mich. 470, 476; 518 NW2d 808 (1994). While provisions that exempt a taxpayer from a taxing statute must be construed in favor of the taxing body, "imposition provisions of a taxing statute should be construed in favor of the taxpayer." *Evanston YMCA Camp v. State Tax Comm,* 369 Mich. 1, 7; 118 NW2d 818 (1962).

"When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that respondent was entitled to judgment as a matter of law, or whether the affidavits and the proofs show that there was no genuine issue of material fact." *Sutton Communities v. Leroy Twp,* 241 Mich.App 665, 668; 617 NW2d 42 (2000).

III. ANALYSIS

A. Mutual Mistake of Fact under M.C.L. § 211.53a

Petitioner argues that the Tax Tribunal erred in granting respondent's motion for summary disposition based on the Tribunal's finding that it lacked jurisdiction pursuant to M.C.L. § 211.53a because of the absence of a mutual mistake of fact. We disagree. [FN2]

FN2. We decline to address petitioner's first issue on appeal. Petitioner argues that the Tax Tribunal erred when it granted respondent's motion for summary disposition pursuant to MCR 2.116(C)(4) stating that the Tribunal lacks jurisdiction because an exemption or taxable status claim is a mistake of *law* and does not fall within the purview of M.C.L. § 211.53a, which requires a mutual mistake of *fact.* Our determination that summary disposition was properly granted based on the absence of a mutual mistake of fact is dispositive and makes review of petitioner's first issue unnecessary.

MCL 211.53a provides for recovery of excess payments not made under protest. It states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

The Restatement (First) of Restitution § 6 Mistake (1937) defines a mistake as a "state of mind not in accord with the facts." It goes on to state, "There may be ignorance of a fact without mistake as to it, since mistake imports advertence to facts and one is ignorant of many facts as to which he does not advert." Here, the assessor based the assessment on the personal property statement, thus he was ignorant of the real facts and did not have a state of mind that allowed for a mutual mistake of fact.

***3** "Mutuality" is defined in Black's Law Dictionary (7th ed) as:

> The state of sharing or exchanging something; a reciprocation; an interchange.

Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The assessor's mistake was based on petitioner's representations on its personal property statement. Thus, there was a different basis for each of the two mistakes made. The nature of the taxation system and the sheer number of businesses that pay taxes do not allow each assessor to individually check each of petitioner's representations on its personal property statement. Petitioner argues that by accepting this statement, the assessor is adopting it as his belief and should be deemed to have made the same mistake as the petitioner. However, this is contrary to the plain meaning of the term

"mutual mistake" of fact. In essence, petitioner is asking that its unilateral mistake be imputed to the assessor and reclassified as a mutual mistake of fact.

Statutory language should be construed reasonably, keeping in mind the purpose of the act. *Draprop Corp v. Ann Arbor,* 247 Mich.App 410, 415; 636 NW2d 787 (2001). Nothing will be read into a clear statute which is not within the manifest intention of the Legislature as derived from the language of the statute itself. *Roberts v Mecosta County General Hospital,* 466 Mich. 57, 63; 642 NW2d 663 (2002). The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *In re Wirsing,* 456 Mich. 467, 474; 573 NW2d 51 (1998). Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, considering the context in which the words are used; technical terms are to be accorded their peculiar meanings. *Robertson v. Daimler Chrysler Corp,* 465 Mich. 732, 748; 641 NW2d 567 (2002). The manner in which petitioner wishes to construe the language of this statute is unreasonable, particularly in light of case law as will be discussed *infra.* The plain meaning of the term "mutual mistake" is not satisfied where the mistaken belief of one party must be imputed to the other and is not an actually held belief.

1. Property Taxation Law Cases

Michigan case law provides very little assistance in the form of prior decisions addressing the definition of "mutual mistake of fact" under M.C.L. § 211.53a.

In *Wolverine Steel Co v. City of Detroit* 45 Mich.App 671, 674; 207 NW2d 194 (1973), although the Court ultimately determined that the case involved an issue of law, and not fact, the Court did make a brief "mutual mistake" analysis. The Court determined that mutual mistake had indeed been made, where the parties had access to, focused upon and contemplated the same fact and then each arrived at the same mistaken belief concerning that fact. Much later, the erroneous belief resulted in the incorrect assessment and payment of taxes. However, in this case the error was not based on an earlier, primary mistake made by *both* parties based on the same facts, instead, it was based on a mistake made by petitioner alone in its preparation of its personal property statement.

*4 We note that petitioner asserts that the following statement of the *Wolverine Steel* Court should be interpreted so as to support its position that a the circumstances of this case satisfy the mutual mistake of fact criteria, "[w]e believe § 53a alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc." Id. at 674. However, this comment is dicta where the ultimate decision in the case turned on whether the mistake was one of fact or law. Although the determination that mutual mistake occurred in the case was also dicta, the particular statement that petitioner urges this Court to follow is inconsistent with other case law involving mutual mistakes of fact and is somewhat vague in that it suggests that M.C.L. § 211.53a is available to both taxpayers and assessors (when it is only available to taxpayers). Thus, this statement does not provide instruction on the interpretation of "mutual mistake of fact" under M.C.L. § 211.53a.

2. Contract Law Cases

We believe that the Tribunal properly cautions against the use of contract- based case law and the definitions of "mutual mistake" contained within because there is an element of equity in contract law that that is not present in property tax law. Our Supreme Court noted in *Spoon-Shacket Co, Inc v. Oakland County,* 356 Mich. 151, 171; 97 NW2d 25 (1959), that "governmental powers of taxation are controlled by constitutional and statutory provisions ... it is not possible to adjudicate issues arising under taxation laws by the general application of equitable principles."

However, some of the general principles and terminologies regarding what constitutes a "mutual mistake" of fact are helpful in resolving this issue. The Tribunal presented three contract cases which provide some instruction on the types of situations that support a finding of mutual mistake of fact.

In *Harris v. Axline,* 323 Mich. 585, 588; 36 NW2d 154 (1949), a buyer and seller entered into a land contract sale. Before the purchase, the agent of the seller and the buyer paced off the 40-foot frontage and confirmed the land description described in the title. After the purchase, a survey revealed that a 6-foot portion of the frontage was owned by the City of Lansing. Our Supreme Court found that this was a mutual mistake of fact because both parties were mistaken as to the actual lot size. Both parties had access to the same facts when they concluded that the frontage was 40 feet. In contrast, both parties in this case did not have the same information. Petitioner

had the property in its possession and it made its determination based on that information. Respondent had only the report of petitioner on which to base its assessment. Thus, unlike in *Harris,* the facts of this case do not indicate that there was mutuality of both fact and belief because the cause and effect were not contemporaneous.

***5** In *Gordon v City of Warren Planning and Urban Renewal Commission,* 388 Mich. 82, 89; 199 NW2d 465 (1972), a planning consultant incorrectly drafted a site plan and indicated that a road was narrower than it actually was. Later, the plaintiffs sought approval for a multiple dwelling project and entered into a site plan approval agreement with the city pursuant to litigation on the matter. The judgment incorporated the error in the site plan by reference. Once building of the project commenced, the error was discovered. On appeal, our Supreme Court found that both plaintiffs and defendant honestly and in good faith believed that the site plan was proper and that the agreement worked out by the parties could be fulfilled and held that there was a mutual mistake of fact which occurred in the original judgment entered by the trial court. *Id.* at 89. Mutuality occurred because both parties relied at the same point in time on the erroneous site plan. The mutual mistake of fact did not occur when the planning consultant made the error and provided the site plan to the parties (similar to the facts of this case), it occurred when both parties believed the plan to be accurate and allowed it to be incorporated into the judgment.

In *Lenawee County Bd of Health v. Messerly,* 417 Mich. 17, 30-31; 331 NW2d 203 (1982), an apartment complex was sold on a land contract. It was later determined that the septic system was inadequate and incurable. Neither party knew of the problem before the sale because the system had been installed by a previous owner. The purchaser examined the property. The court stated:

> All of the parties to this contract erroneously assumed that the property transferred by the vendors to the vendees was suitable for human habitation and could be utilized to generate rental income. The fundamental nature of these assumptions is indicated by the fact that their invalidity changed the character of the property transferred. *Id.* at 22.

In the *Lenawee County Bd of Health* decision the mutual mistake of fact was in the basic assumption that the land was suitable for use as an apartment complex and for habitation by humans. The *Lenawee County Bd of Health* decision did not involve one party making a mistake and then providing erroneous information to the other party, who relied on that incorrect information. It was a case where both parties made an identical assumption based on identical information.

These three contract cases provide guidance as to the meaning of the doctrine of mutual mistake. The parties must have a shared mistaken belief regarding a fact which constitutes a basic assumption underlying the contract. The nature of the mistakes that qualified as mutual mistakes of fact in the above mentioned contract law cases (unlike the present case) was that they all involved mutuality and in all three cases the parties made their mistakes based on the same information.

3. Statutory Interpretation

***6** Petitioner argues that the Tribunal erred when it applied the doctrine of *in pari materia* to its analysis of M.C.L. § 211.53a when it incorporated the limiting language found in M.C.L. § 211.53b into its interpretation of M.C.L. § 211.53a.

If two or more statutes arguably relate to the same subject or have the same purpose, they are considered in pari materia and must be read together to determine legislative intent. *People v. Webb,* 458 Mich. 265, 274; 580 NW2d 884 (1998); *State Treasurer v. Schuster,* 456 Mich. 408, 417; 572 NW2d 628 (1998), quoting *Detroit v. Michigan Bell Telephone Co,* 374 Mich. 543, 558; 132 NW2d 660 (1965). The purpose of the in pari materia rule is simply to assist this Court in interpreting the Legislature's intent. *Webb, supra.* Statutes relate to the same subject if they relate to the same person or thing or the same class of persons or things. *Empire Iron Mining Partnership v Orhanen,* 455 Mich. 410, 427; 565 NW2d 844 (1997), quoting *Detroit, supra* at 558. Statutes need not be enacted at the same time or even refer to each other to be read in pari materia. *State Treasurer, supra; Travelers Ins v U-Haul of Michigan, Inc,* 235 Mich.App 273, 279; 597 NW2d 235 (1999).

211.53b provides in pertinent part:

> If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the error or mutual mistake shall be verified by the local assessing officer, and approved by the board

> of review.... If the error or mutual mistake results in an overpayment or underpayment, the rebate shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A correction under this subsection may be made in the year in which the error was made or in the following year only. MCL § 211.53b(1)

In *International Place Apartments IV v Ypsilanti Township,* 216 Mich.App 104, 108, 548 NW2d 668 (1996), this Court applied M.C.L. § 211.53b and determined that it did not apply to allow correction of an assessment which did not include some newly added assessable property because of a filing error in the assessor's office. The Court stated:

> The mistake in the case at bar was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure. Rather, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albeit that the assessor may well have erred in the determination of what that number should be by failing to consider all relevant facts. In short, we agree with the Tax Tribunal that § 53b allows for corrections of clerical errors of a typographical or transpositional nature, but does not permit a reappraisal or reevaluation through the use of new or existing data of any type. That is, § 53b simply does not include cases where the assessor fails to consider all relevant data, even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document.
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> * * *
>
> *7 The facts not being in dispute with regard to how the mistake arose, it is simply a matter of statutory interpretation whether that mistake is correctable under the statute. We have concluded that it is not.

Here, the Tribunal noted the reasoning and decision in *International Place, supra* and applied this same reasoning to its interpretation of the events of this case (it also noted that the Court in *Wolverine Steel, supra,* indicated that relief under M.C.L. § 211.53a was intended to be narrow and specifically limited. *Id* . at 636). The Tribunal stated:

> ... the mutuality of the fact and the mutuality of the mistaken belief must be so blatantly simple and obvious that, in review of events, both are clearly discernible on their face by a trier of fact. In the Tribunal's view, that level of obviousness--the mutual mistake being equal in simplicity as were the clerical errors defined in International Place--is met only by dual mutuality, as the only form of mutuality that lends itself equally to ready discernment and simplicity. That is, the fact is mutual as to the material data reviewed and contemplated, and the mistaken belief is mutual in all respects ... The mutuality occurs at an intersection of the parties' respective specific focus on a singular fact or set of facts of material import, form which is drawn a common mistaken belief. By the same means, simplicity is distinguished by the mutuality criteria, both parties being aware of and having contemplated the same fact, and arriving at the same mistaken belief, both he fact and the mistaken belief being the primary cause of the erroneous assessment/ tax.

4. Available Remedies

We note that petitioner did have other remedies that could have been used in an attempt to recover an overpayment of personal property taxes. MCL 211.30 requires taxpayers who believe that they were incorrectly assessed to file petitions before the local board of review in March. MCL 211.30 allows taxpayers to raise any type of claimed error including factual, legal, valuation, uniformity, exemption, description and ownership. Assessments are made in January and February so taxpayers have an opportunity to discover a mistake before March and have the mistake resolved at the board of review hearing.

Relief is also available to a petitioner who is incorrectly assessed under M.C.L.§ 211.154, which states in relevant portion:

> (1) If the state tax commission determines that property liable to taxation ... has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date of discovery and disclosure to the state tax commission of the incorrect reporting or omission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. The commission shall issue an order certifying to the treasurer of the local tax collecting unit if the local tax collecting unit has possession of a tax roll for a year for which an assessment change is made or the county treasurer if the county has possession of a tax roll

> for a year for which an assessment change is made the amount of taxes due as computed by the correct annual rate of taxation for each year except the current year. Taxes computed under this section shall not be spread against the property for a period before the last change of ownership of the property.

***8** The appropriate avenues of relief for petitioner's claims were under M.C.L§ 211.30 and M.C.L.§ 211.154 and not M.C.L. § 211.53a.

When taken as a whole, the plain meaning of the statute, case law, statutory interpretation, and the availability of another remedy indicate that the Tribunal was correct in its determination that this situation did not present a "mutual mistake of fact" and was not properly brought under M.C.L. § 211.53a. There were two separate, but related events in this case. The first was a unilateral mistake made by petitioner in its preparation of its personal property statement. The second event was respondent's reliance on petitioner's assertions in making its assessment. There was no "mutual mistake" because each party had different information on which to base their ultimate conclusions.

B. Sua Sponte Dismissal of Remaining Claims

Following its determination that relief was not available to petitioner pursuant to M.C.L.§ 211.53a, the Tribunal reviewed petitioner's six additional claims and discovered that all seven claims involve erroneous reporting by petitioner and all seven are based on the same assertion that the mutual mistakes were in the filing and acceptance of the erroneous personal property statements. The Tribunal sua sponte determined that this series of events does not constitute mutual mistake for the purposes of M.C.L. § 211.53a in any of the remaining six claims and dismissed those claims for lack of jurisdiction.

Petitioner asserts that the Tribunal erred in ruling sua sponte. However, our Supreme Court,*Fitz v University of Michigan Board of Regents,*375 Mich. 238, 242; 134 NW2d 146 (1965), stated that a court (here the Tribunal):

> At all times is required to question sua sponte its own jurisdiction (whether over a person, the subject matter of an action, or the limits on the relief it may afford).

Here, the Tribunal properly questioned its ability to provide relief on the additional counts and its decision to dismiss those counts sua sponte was not in error.

Petitioner also argues that this sua sponte dismissal denied petitioner the opportunity to be heard on this matter. However, although petitioner asserts that it was entitled to an oral argument, the Tax Tribunal Rules do not require that oral arguments be provided on motions. *Federal Mogul Corp v. Department of Treasury,* 161 Mich.App 346, 356-357; 411 NW2d 169 (1987). Respondent correctly notes that petitioner was given the opportunity to express its position in its brief in opposition to partial summary disposition.

In short, the tribunal correctly determined that there was no mutual mistake of fact with regard to the special tools exemption claim. For the other claims to result in a different resolution, the alleged "mutual mistake of fact" would need to have occurred in a different manner. Here, the six other claims all resulted from the unilateral mistakes of petitioner. Additional facts are unnecessary for the resolution of these issues and hearings on each additional count would be a waste of the Tribunal's resources. Therefore, the Tribunal's decision to dismiss these claims sua sponte was correct.

C. Cross Appeal

***9** Respondent argues on cross appeal that the Tax Tribunal erred when it failed to grant summary disposition under MCR 2.116(C)(10) based on respondent's assertion that petitioner's property did not qualified for an exemption as "special tools." Our decision that summary disposition was properly granted under MCR 2.116(C)(4) where there was an absence of a mutual mistake of fact, obviates review of this issue.

Affirmed.

2003 WL 21040312 (Mich.App.)

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